

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

CRIMINAL NO. 12-20030

vs.

HON. NANCY G. EDMUNDS

D-4 PAUL STEWART,

Defendant.

/

SENTENCING MEMORANDUM OF THE UNITED STATES
AS TO DEFENDANT PAUL STEWART

The United States of America submits the following memorandum concerning the sentencing of defendant Paul Stewart.

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I. INTRODUCTION

Paul Stewart, an elected Trustee of the City of Detroit's Police and Fire Retirement System ("PFRS") from 2005 until 2011, betrayed the trust of his fellow police officers, pensioners and all other participants and beneficiaries of the PFRS by lining his own pockets with bribes from businessmen who were shopping investments to the PFRS board during the 2006 to 2009 time period. Though his duty was to act solely on behalf of pension fund participants and their beneficiaries, pursuing investments that would increase the value of the pension fund and thereby the benefits to be paid out, Stewart allowed his judgment to be compromised by the lure of short-term personal gains.

On at least sixteen different occasions, Stewart accepted cash, trips and other things of value totaling over \$63,000 in value from individuals seeking or having business before the PFRS board. The corrupt deals associated with Stewart's receipt of those benefits experienced losses to the PFRS totaling over \$47 million, and the bribe payers themselves were enriched by roughly \$5.2 million. More importantly, Stewart's actions deprived the retirees and their beneficiaries of his own honest services and the honest services of other PFRS trustees during a critical period of the U.S. economy – a time when financial diligence and attention to detail could have arguably minimized the impact of the cratering of the real estate and financial markets.

Stewart's actions in accepting offers of cash, trips, casino chips and meals and drinks attest to his development of an appetite for the lavish life, a fact which evidenced itself in other aspects of his life during the same time period. To wit: In addition to serving as a Trustee for the PFRS, Stewart also served as the Vice President of the Detroit Police Officer's Association ("DPOA") – the police officers' union. Stewart was paid about \$27,000 for his service as a DPOA officer, above and beyond his salary of approximately \$53,000 as a police officer. Yet, that additional compensation proved insufficient to satisfy Stewart's desire for "more." His dear friend and co-Trustee Martin Bandemer served as the President of the DPOA at the same time, and together, Stewart and Bandemer helped themselves to excess campaign contributions to the tune of \$8,000 apiece – converting the "campaign" money to their own personal use.

Additionally, as the union Vice President, Stewart was issued a DPOA gas card and received reimbursement from an expense account for meals. Stewart was not shy about using those perks to his own personal advantage. When not being wined and dined by FPRS investment sponsors, third party marketers and contractors at Mosaic, Stewart and Bandemer often took their meals at Sinbad's Restaurant, a popular seafood restaurant on the east side of Detroit. Stewart admitted at trial that from 2006-2009, he spent over \$10,000 of DPOA funds for meals and drinks at Sinbad's alone. Hence, Stewart's expectation of largesse in the

context of the PFRS was not anomalous, but rather consistent with the manner in which he had become accustomed to being accommodated. Viewed in this context, it can rightly be stated that Stewart did not conduct himself as a public servant and keeper of a trust so much as an entitled and pampered taker, indulging his own vices at the expense of those to whom he owed a duty of trust.

Taking into consideration the gravity of Stewart's crimes, the impact on the pensioners and the city, as well as the sentencing guidelines and the statutory factors set forth at Title 18, United States Code, Section 3553(a), a sentence of at least eight years in prison is appropriate in this case.

II. ARGUMENT

A. The Nature and Circumstances of Stewart's Crimes (18 U.S.C. § 3553(a)(1))

First starting in 1977, Paul Stewart served as a police officer on and off for the City of Detroit until his retirement in 2011. While serving as a police officer, Stewart became active in the DPOA, until he eventually rose to become its Vice President. While a Detroit police officer, Stewart was also elected by his fellow officers to serve as a Trustee of the PFRS. Stewart served as a Trustee from 2005 until 2011, when he retired as a police officer. The PFRS held billions of dollars in assets in trust for employees, pensioners, and beneficiaries. During the conspiracy, the PFRS covered 4,078 active employees and 8,442 pensioners and beneficiaries.

Stewart served as a PFRS Trustee alongside Martin Bandemer, a fellow police officer and the President of the police union. Stewart and Bandemer formed an important bloc of two votes on the PFRS board. As noted above, while serving as a police officer, union Vice President, and Trustee, Stewart accepted bribes and kickbacks in exchange for his support on decisions made by the PFRS board. These bribes and kickbacks were paid by third party marketers, investment sponsors, and contractors to the pension systems. Set forth below is a summary of some of the various deals on which Stewart accepted bribes and kickbacks.

1. Bribes on the ICG Leaseback Deal

Stewart accepted bribes and kickbacks from investment sponsor Robert Shumake. In 2007, the General Retirement System and the PFRS invested \$44 million in the ICG Leaseback deal, in which Shumake structured the leased-back purchase of five warehouses from General Motors. To ensure the success of this venture, Shumake agreed to pay third party marketer Steven Pankake and city official Derrick Miller over \$1 million if the boards approved the proposal. In September 2007, a narrow majority of the PFRS board voted preliminary approval of Shumake's deal, with Stewart and Martin Bandemer among the Trustees voting against the proposal. The firefighter trustees vociferously opposed the version of Shumake's deal that was pushed through by Beasley, feeling that the deal's terms strongly favored Shumake and were disadvantageous to the pension systems.

In early December 2007, Shumake attended a pension conference in New York City, which also was attended by a number of PFRS Trustees. Detroit pension board General Counsel Ronald Zajac advised Shumake to give Stewart and Bandemer some cash for entertainment during the conference in order to smooth things over with them. Shumake took the advice, and Shumake gave \$2,500 in cash each to Bandemer and Stewart. Two weeks later, when Shumake's deal came up for final approval after it had been restructured as a debt deal, instead of equity, Stewart and Bandemer both changed their votes and supported Shumake's deal under the same rate of return as they had opposed in September. Shumake's deal also provided that the pension systems pay over \$1 million in fees to Pankake and Miller. Besides accepting the cash from Shumake, Stewart also had accepted at least \$10,000 in cash from Pankake. This gave Stewart an additional reason to change his vote and support Shumake's ICG Leaseback deal given that Pankake was going to make over \$500,000 if it went through.

Subsequently, Shumake continued to pay off Stewart and Bandemer. In January 2008, Shumake again gave \$2,500 in cash each to Stewart and Bandemer in Boca Raton, Florida. In March 2008, Shumake paid for Stewart, Stewart's mistress, and Bandemer to travel to the Bahamas for a day cruise. Shumake also gave \$1,500 in cash each to Stewart and Bandemer for gambling and entertainment on the cruise.

2. **Bribes From Steve Pankake and the McRae Deal**

Stewart's acceptance of a \$10,000 cash bribe from third party marketer Steven Pankake also was connected to the McRae land deal. The McRae deal involved the purchase by the PFRS of about 1,000 acres of empty land in Texas for over \$14 million. Pankake was a third party marketer on the deal, and Pankake stood to earn a \$300,000 commission if the PFRS board approved the deal. In 2007, Stewart played a leading role in pushing through the McRae deal. In every instance, the board minutes reflected the fact that Stewart was the moving party at each stage in the approval of the McRae deal. One obstacle faced by Pankake and the McRae deal was the fact that PFRS real estate advisor Steve Burns thought that the McRae deal was too risky for the board. After Burns advised against doing the McRae deal, Stewart, Bandemer (who also had accepted \$10,000 in cash from Pankake), and other PFRS trustees fired Burns. After Burns was out of the way, the PFRS board approved the deal, and Pankake was paid \$300,000.

Subsequently, the McRae deal indeed turned out to be too risky. The PFRS lost \$14.25 million on the deal. Thus, instead of simply a real estate investment that fared poorly, the McRae deal was a complete disaster, with the PFRS losing everything. However, Stewart did get his \$10,000 in cash, and Pankake received his \$300,000 payday for his work in paying off Stewart and other trustees.

3. **Bribes From Jim Papas**

Stewart also received bribes and kickbacks from Dimitrios (“Jim”) Papas. Papas had a financial stake in several transactions involving the pension boards. Papas had a direct stake in the Romulus toxic waste deep injection well, in which the PFRS had a substantial investment. Papas also was a third party marketer on the BlackEagle and PITG investment deals. At trial, Stewart admitted that he had received a \$5,000 casino chip from Papas in a Christmas card in December 2007. Stewart received the \$5,000 within a week after Papas had received check for \$600,000 on the BlackEagle deal for Papas’ “work” as a third party marketer. Stewart had backed the \$15 million BlackEagle deal in November 2007, and then Stewart took the money from Papas the following month. Stewart was aware that his close friend and fellow PFRS Trustee, Martin Bandemer, also received a \$5,000 casino chip from Papas at the same time as Stewart. Furthermore, Papas was involved in wining and dining Stewart and other trustees following the weekly pension board meetings at Papas’ restaurants, the Mosaic and Pegasus. Beyond supporting the BlackEagle deal, Stewart further rewarded Papas by backing Papas’ PITG casino deal in 2008 and supporting Papas’ investment in the Romulus toxic waste well. Significantly, before Papas became involved in the toxic waste well, Stewart had consistently opposed spending more PFRS money on the deal. However, after Papas got involved, Stewart suddenly became supportive.

4. Bribes From Chauncey Mayfield

Stewart accepted bribes and kickbacks from Chauncey Mayfield. Mayfield owned MayfieldGentry Realty Advisors (“MGRA”), which had a real estate investment advisory agreement with the PFRS that involved hundreds of millions of dollars in real estate investments for the board. While acting as an advisor to the PFRS, Mayfield paid to wine and dine Trustees, including Stewart. In addition, Mayfield paid \$10,000 to provide limousines for Stewart and other trustees in a New York City pension conference in December 2006. Mayfield was highly motivated to take care of the trustees since Mayfield personally (as opposed to the millions in fees collected by MGRA) collected over \$2 million in compensation for himself as a result of his company’s booming business with the PFRS as supported by Stewart.

5. Bribes and Kickbacks From Roy Dixon

Roy Dixon was an investment sponsor and broker who dealt with the retirement systems for several years. Stewart and the PFRS gave Dixon and Onyx, his private-equity company, \$10 million in pension money (the GRS also gave Dixon another \$10 million). In addition, Dixon sought a significant real estate investment from the PFRS in the Turks and Caicos Islands. During the conspiracy, Stewart and the trustees had to approve capital calls from Dixon and Onyx off of the \$10 million investment. In addition, Stewart pushed forward the Turks and

Caicos deal, supporting due diligence investigations and then approval of a deal in early 2008, although the deal was not ultimately funded following a hurricane that hit the islands.

Stewart and other trustees were motivated by various bribes and kickbacks that Dixon paid to them during the conspiracy. Dixon's bribes and kickbacks to Stewart included the following: (1) a Christmas basket containing \$1,500 in cash in December 2007; (2) Dixon gave Stewart a book containing approximately \$1,500 in cash; (3) Dixon gave \$750 in cash to Stewart before Stewart went on an out-of-town pension trip; (4) Dixon gave about \$3,000 in cash to Stewart for entertainment during pension trips; (5) Dixon picked up tabs for Stewart and other trustees in Detroit and elsewhere; (6) Dixon gave money to Stewart to support Stewart's union and trustee "campaigns" (Stewart then used the money for personal purposes); and (7) Dixon paid for a December 2008 trip to Naples, Florida for Stewart and his mistress at the Ritz-Carlton which cost approximately \$3,000.

6. Stewart and Bandemer Collect Birthday and Campaign Cash

While serving as a Trustee, Stewart took several opportunities to collect thousands of dollars in cash from people having business before the PFRS board.

In August 2007, co-defendant Ronald Zajac, general counsel for both pension systems, hosted a birthday party for Stewart and Martin Bandemer at the

Atheneum Hotel. The invited guests were persons who dealt with the pension boards. Zajac informed the guests to bring cash. They gave from \$300 to \$1,000. Zajac collected the money and gave a total of \$5,000 in cash each to Stewart and Bandemer at the end of the evening. This was a follow-up to the birthday party that Zajac organized for Jeffrey Beasley in January 2007.

Zajac's pay-off for these birthday parties came in the fall of 2007, when he received a 33 1/3% increase in his annual salary. At the October 18, 2007 PFRS meeting, Stewart made a motion, which was seconded by Beasley, that Zajac's salary be increased by 33 1/3%. The motion passed, with the three elected firefighters voting no. As a result of this extraordinary and unjustified salary increase, Zajac received more than \$468,000 in excess salary from the end of 2007 until he was terminated by the boards.

Besides accepting the \$5,000 in cash collected by Zajac, Stewart also learned during the birthday party the identity of at least some of the contributors to the \$5,000 gift who also attended the party. The contributors included Chris Jackson, Roy Dixon, Tom Zdrodowski, and Joe Turner. These men also picked up tabs and paid for entertainment for Stewart. Stewart supported either their investments before the PFRS board or their retention as counsel for the board.

Stewart and Bandemer also made it a practice to collect cash, ostensibly for campaign expenses, from investment sponsors, third party marketers, and board

contractors. In fact, however, Stewart and Bandemer collected over \$16,000 in cash from people having business before the PFRS board, and then Stewart and Bandemer proceeded to split and pocket the \$16,000 in cash between them for their own personal expenses.

B. Sentencing Guidelines Calculation for Stewart

Section 2C1.1(b)(2) of the sentencing guidelines requires an increase in the offense level based on “the value of the payment, the benefit received or to be received in return for the payment, the value of anything obtained or to be obtained by a public official or other acting with a public official, or the loss to the government from the offense, whichever is greatest.” Thus, the offense level is increased based on the greatest of (1) the loss to the government, (2) the benefit received or to be received by the person paying the bribe or kickback, or (3) the value of the bribe and/or kickback obtained by the public official.

1. The Loss to the Pension Systems

The Probation Office based its guideline calculation on the \$47,250,000 loss to the pension systems that resulted from the pension deals that were corrupted by the bribes and kickbacks accepted by Stewart. PSIR ¶¶ 39, 46. This loss results in a 22-level upward adjustment of the guidelines. The defendants have argued that this loss figure is unreliable and too attenuated to serve as a basis for the guidelines calculation. While the government does not accede to defendant’s argument on

attenuation, it acknowledges that ascribing a loss at that level likely over-weights Stewart's culpability. Further, even if those arguments are successful, there are other grounds for calculating the offense level which provide upward adjustments that are more directly tied to either the bribes and kickbacks accepted by Stewart or the benefits received by the men who paid Stewart those bribes and kickbacks.

2. The Benefits Received by the Bribe Payers

During the course of the conspiracy, at least \$5.2 million in pension fund money was received by persons who paid bribes or kickbacks to Stewart and his co-conspirators as part of the conspiracy to deprive the participants and beneficiaries to their right to the honest services of the trustees. The following list is a conservative computation of those illegal benefits:

Robert Shumake	\$1,181,440	1% increase in acquisition fee for ICG Leaseback investment under Scenario 8
Jim Papas	\$600,000	Fee for BlackEagle investment
Chauncey Mayfield	\$2,000,000	Salary, bonuses, and cash disbursements to Mayfield personally
Roy Dixon	\$500,000	Fees by PFRS to Dixon and Onyx
Ronald Zajac	\$468,000	Salary increase
Christopher Jackson	\$210,000	Fees for the Life Assurance investment
Steven Pankake	\$300,000	Fees on the McRae Investment
Total	\$5,259,440	

If the Court uses this method of calculating the guideline range, Stewart would receive an 18-level upward adjustment instead of the 22-level adjustment based on the loss to the pension systems.

3. Value of Bribes and Kickbacks Obtained by Stewart and His Co-Conspirators

Section 2C1.1(b)(2) provides for an enhancement of the guideline range based on the “value of anything obtained or to be obtained by a public official or others acting with a public official.” Because the value of the benefits received by the bribe payers in return for the payments to Stewart and his co-conspirator public officials is greater than the value of the things obtained by Stewart and those public officials acting with him, the United States is not seeking a sentencing guideline range based on the value of the things obtained by Stewart and those acting with him. However, in order to be complete, set forth below is a list of the things received by Stewart or those working with him:

Payments Received by Stewart or Co-Conspirators

Cash received by Stewart

- \$2,500 Cash from Robert Shumake in New York City
- \$2,500 Cash from Robert Shumake in Boca Raton, Florida
- \$1,500 Cash from Robert Shumake during Bahamas trip
- \$10,000 Cash from Steve Pankake
- \$8,000 Campaign contributions retained for personal use
- \$750 Cash from Roy Dixon at Sinbad’s
- \$1,500 Cash from Roy Dixon—Christmas basket

\$1,500 Cash from Roy Dixon—placed in book
\$3,000 Cash from Dixon during 2008 Florida trips
\$5,000 Cash from August 2007 birthday party—supplied by Zajac from pension sponsors
\$5,000 Casino chip from Jim Papas
\$5,000 Anmar Sarafa donation to Detroit Police Officer's Union

Total: \$46,250

Cash received by Martin Bandemer—Known to Stewart

\$2,500 Cash from Robert Shumake in New York City
\$2,500 Cash from Robert Shumake in Boca Raton, Florida
\$1,500 Cash from Robert Shumake during Bahamas trip
\$10,000 Cash from Steve Pankake
\$8,000 Campaign contributions retained for personal use
\$750 Cash from Roy Dixon at Sinbad's
\$1,500 Cash from Roy Dixon—Christmas basket
\$3,000 Cash from Dixon during 2008 Florida trips
\$5,000 Cash from August 2007 birthday party—supplied by Zajac from pension sponsors
\$5,000 Casino chip from Jim Papas

Total: \$39,750

Other Things of Value Received by Stewart

\$10,000 Limousines supplied by Mayfield in New York City--2006
\$3,000 Meals, drinks, and entertainment paid for by investment sponsors

Total: \$13,000

Trips for Stewart

\$3,000 Trip to Naples, Florida for Stewart and Constance Slappey from Roy Dixon
\$1,500 Cost of Trip to the Bahamas from Robert Shumake

Total: \$4,500

Total: \$103,500 attributable to Stewart

Based on the \$103,500 attributable to Stewart, he would receive an 8-level upward adjustment under Section 2C1.1(b)(2).

Looking just at the things of value that Stewart himself personally received, this total is \$63,750. This figure includes the cash, other things of value, trips for Stewart and his mistress, and a conservative estimate of the value of the dining and drinks paid for by investment sponsors and third party marketers. Although Martin Bandemer received a total of \$39,750 in cash as part of the conspiracy, this amount is still attributable to Stewart under the guidelines as things of value received by the public official or others acting with the public official under Section 2C1.1(b)(2).

C. The Seriousness of Stewart's Crimes, Just Punishment, and Respect for the Law (18 U.S.C. § 3553(a)(2)(A))

Stewart's crimes as a sworn police officer, police union Vice President, and Trustee were serious. His actions also spanned over the course of several years, and demonstrated a commitment to a system of operating that was clearly mired in the muck of a "you scratch my back and I'll scratch yours" mentality that infested the public pension systems.

A substantial prison sentence is necessary to reflect the seriousness of Stewart's crimes, to provide just punishment for those crimes, and to promote respect for the law. Stewart's self-dealing fell in line with a course of conduct embraced by the mayoral administration during that time, and in fact, took full advantage of the cloak of cronyism, greed and self-satisfaction that permeated several institutions of city government as it stood. Although there certainly was corruption and unethical behavior in the Detroit pension systems in the years before Stewart was elected to serve as a Trustee in 2005, Stewart's actions extended the legacy of corruption to someone who was sworn to uphold and enforce the law. Anytime, a member of the law enforcement community is implicated in criminal behavior, it serves to diminish the trust that citizens rightfully place in those sworn to protect and serve. Though Stewart's crimes did not flow directly from actions taken in the context of traditional "police work," his conduct nevertheless is viewed by the general public through the prism of the badge. Thus, it injures an important institution of society.

The pensioners and employees had the right to expect that Stewart would use all of his skills, talents, and integrity to ensure the security and growth of the money entrusted to his care. Instead, they got widespread graft, extortion, and theft. Stewart took bribes from people like Chauncey Mayfield and Roy Dixon in exchange for Beasley directing the pensioners' money into the proposed

investments of Pankake and Dixon. Unsurprisingly, these men then turned around and proceeded to steal and embezzle millions from the pension systems. This is the kind of culture that Stewart embraced.

Stewart's crimes undermined the pensioners' and employees' confidence in their own financial security upon their retirement and their confidence in their public officials because of the corrosive nature of Stewart's corruption. As described by a federal judge in the prosecution of a corrupt mayor of Bridgeport, Connecticut:

Government corruption breeds cynicism and mistrust of elected officials. It causes the public to disengage from the democratic process because . . . the public begins to think of politics as "only for the insiders." Thus corruption has the potential to shred the delicate fabric of democracy by making the average citizen lose respect and trust in elected officials and give up any hope of participating in government through legitimate channels.

United States v. Ganim, No. 3-01-CR-263, 2006 WL 1210984, at *5 (D. Conn., May 5, 2006), *aff'd*, 510 F.3d 134 (2d Cir. 2007).

Given the damage that Stewart has done to Detroit's pension systems and the harm to its pensioners, beneficiaries, and employees, a substantial sentence is necessary not only to sufficiently punish Stewart, but to renew public confidence in the rule of law.

D. Deterring the Criminal Conduct of Others
(18 U.S.C. § 3553(a)(2)(B))

Just as in the case of co-defendant Jeffrey Beasley, imposing a significant prison sentence on Stewart serves the important purpose of deterring future public officials in this district and beyond from engaging in similar misconduct. *See* 18 U.S.C. § 3553(a)(2)(B). General deterrence has its greatest impact in white-collar cases, like this one, because these crimes are committed in a more rational and calculated manner than sudden crimes of passion or opportunity. *United States v. Peppel*, 707 F.3d 627, 637 (6th Cir. 2013) (quoting *United States v. Martin*, 455 F.3d 1227, 1240 (11th Cir. 2006)). As a federal judge in Chicago stated:

We need not resign ourselves to the fact that corruption exists in government. Unlike some criminal justice issues, the crime of public corruption can be deterred by significant penalties that hold all offenders properly accountable. The only way to protect the public from the ongoing problem of public corruption and to promote respect for the rule of law is to impose strict penalties on all defendants who engage in such conduct, many of whom have specialized legal training or experiences. Public corruption demoralizes and unfairly stigmatizes the dedicated work of honest public servants. It undermines the essential confidence in our democracy and must be deterred if our country and district is ever to achieve the point where the rule of law applies to all --- not only to the average citizen, but to all elected and appointed officials.

United States v. Spano, 411 F.Supp.2d 923, 940 (N.D. Ill. 2006).

This case is a part of the group of prosecutions of the Kilpatrick administration's corrupt governance of the city. This Court imposed serious sentences on former Mayor Kilpatrick and Bobby Ferguson of 28 and 21 years

respectively. And, Stewart's co-defendant Jeffrey Beasley received a sentence of 11 years. This case is the final chapter of this series of cases. By their very nature, pension systems are especially vulnerable to corruption. Billions of dollars in public pension money are overseen by public officials in this state and across the country. These officials will be tempted to use their positions for their own benefit. These trustees need to know that there are severe consequences for violating the public trust. A substantial sentence in this case will demonstrate to them and to the citizens of the region that corruption will be seriously addressed and punished when discovered.

**E. Protecting the Public from Further Crimes by Stewart
(18 U.S.C. § 3553(a)(2)(C))**

To date Stewart has not shown remorse, acceptance of responsibility, or any recognition of the fact that his actions were criminal. Stewart's lack of remorse and willingness to commit perjury at trial does not give any confidence that he will not commit new crimes if given the liberty to do so. However, given his retirement and felony conviction, it is unlikely that he will be put in a position of trust to commit additional crimes in the future.

**F. Sentences Contemplated by the Sentencing Guidelines
(18 U.S.C. § 3553(a)(4)(A), (b)(1) & (c))**

The government concurs with the factual findings and calculations contained in the presentence investigation report. The PSIR assigns Stewart a total offense level of 43, which puts his guidelines range of imprisonment at twenty years.

1. Specific Offense Characteristics

As a starting point, Stewart's base offense level is fourteen because he committed his honest services, extortion, and bribery crimes while acting as a "public official." U.S.S.G. §§ 2E1.1 & 2C1.1(a)(2). To make matters worse, Stewart was not a lower-level public official. Instead, he was a Trustee of the PFRS overseeing billions of dollars. As a result, his base offense level should be increased by four levels because he was a public official in a "high-level decision making or sensitive position." *Id.* at § 2C1.1(b)(3). As noted, as a trustee for the PFRS, Stewart was empowered with high-level decision making authority concerning the investment of moneys on behalf of the city's first responders.

Stewart's argument that he is not a public official is simply off-base. The PFRS is an entity which exists solely through the City Charter of Detroit. It was created under Chapter VII of Title IX of the Charter of the City of Detroit over 70 years ago. (Attached as Exhibit 1). Under the version of the Charter which was in place during Stewart's tenure, the Board of Trustees is provided for in Chapter VII,

Article III, §1. The police seats on the PFRS board as well as the rules for their election were provided for in Chapter VII, Article III, §2.

Moreover, as noted in *United States v. Jones*, 260 Fed. Appx. 873, 877 (6th Cir. 2008), where the defendant, a contract employee serving as a licensing clerk for the Tennessee Department of Safety, argued that she did not qualify as a “public official” for purposes of sentencing her for bribery, the Sixth Circuit ruled that the term “public official” should be construed broadly. More particularly, the Court credited the commentary to U.S.S.G. 2C1.1 which expressly states that a defendant qualifies as a public official if the official is “(1) acting for or on behalf of a state government, or any department, agency or branch of government...or (2) occupying a position of public trust with official responsibility for carrying out a government program or policy.” *Id.* at application note 1. As a contractor for the TDOS, the defendant in *Jones* was responsible for administering driver’s license tests, taking pictures of applicants and recording applicant’s eye test results. *Id.* at 874. Even with the relatively low level responsibilities, the *Jones* defendant was acting on behalf of the state government and thus deemed to be a public official.

In Stewart’s case, both prongs of the application note apply. He was a sworn police officer employed by the city to enforce the law. He served as a Trustee by virtue of his position with the police department of the city, and in fact, would have been ineligible to fill the seat he held if he was not a police officer. Thus, he can

be said to have been acting on behalf of the department in serving on the PFRS board. Second, the PFRS is inarguably a public pension program. The Board of Trustees is responsible for administering the program, and its members have broad discretion as well as a fiduciary obligation to choose investments which will benefit the public employees – police and firefighter retirees and their beneficiaries. Therefore, Stewart occupied a position of trust which carried specific responsibility to carry out the City of Detroit's pension program for police and firefighters. There is simply no authority to suggest that otherwise.

His offense level should be increased by another two levels because he accepted multiple bribe payments from various local businessmen, including Robert Shumake, Chauncey Mayfield, Steven Pankake, Jim Papas, Roy Dixon, Chris Jackson, and others. *Id.* at § 2C1.1(b)(1).

Stewart's offense level must be further adjusted upward because of the benefit received or the loss suffered as a result of his honest services conspiracy. *Id.* at § 2C1.1(b)(2). To calculate this adjustment, the court must make a reasonable estimate, by a preponderance of the evidence, of the greater of the "actual" benefit/loss and the "intended" benefit/loss. U.S.S.G. § 2B1.1, cmt., app. n. 3(C); *United States v. Blackwell*, 459 F.3d 739, 772 (6th Cir. 2006); *United States v. Triana*, 468 F.3d 308, 320 (6th Cir. 2006). The court need not establish the value of the benefit/loss with precision, but simply must publish its resolution

of contested factual matters forming the basis for its valuation. *United States v. Peppel*, 707 F.3d 627, 645 (6th Cir. 2013).

As a trustee who accepted bribes and kickbacks, Stewart is responsible for all the financial losses or gains within the scope of the conspiracy so long as they were reasonably foreseeable. U.S.S.G. § 1B1.3(a)(1)(B); *United States v. Campbell*, 279 F.3d 392, 399-400 (6th Cir. 2002); *United States v. Hamilton*, 263 F.3d 645, 654 (6th Cir. 2001). As set forth above, there are four possible calculations: the loss to the pension systems, the value of the benefits received by the bribe payers, the value of the benefits received or to be received by Stewart and the public officials working with him that were foreseeable to Stewart, or the value of the benefits received or to be received by Stewart alone. In the course of the conspiracy, the loss to the pension systems was \$47 million. The bribe payers received an approximate benefit of \$5.2 million. And the benefit received by Stewart and his co-conspiring public officials, of which Stewart was directly aware, was \$103,000. A fourth alternative would look at benefits received by Stewart alone, which totaled \$63,750. Based on these four figures, Stewart would receive a 22-level (\$47 million loss), 18-level (\$5.2 million benefit), 8-level (\$103,000 benefit to the public officials), or 6-level upward adjustment based on the value of the benefit or loss under the ranges set forth in Section 2B1.1(b)(1).

Under the Probation Office's calculation, which uses the \$47 million loss figure, Stewart's range is 240 months, based on an offense level of 43. PSIR ¶ 84. If the Court applies the \$5.2 million benefit to the bribe payers' calculation, instead of the loss to the pension systems, then Stewart's range is still at 240 months, based on an offense level of 40. Applying the benefit received or to be received by Stewart and his co-conspirators, Stewart's range is 97 to 121 months, with an offense level of 30. Applying the benefit received or to be received by Stewart alone, results in a range of 78 to 97 months.

2. Stewart's Obstruction of Justice Before the Grand Jury and at Trial

Stewart committed perjury before the Grand Jury and again at trial. As a result, Stewart has received a two-level upward adjustment for obstruction of justice under Section 3C1.1. PSIR ¶¶ 41-42. After lying in his Grand Jury testimony, Stewart was confronted with his obstruction of justice. Stewart refused to accept responsibility. Instead, he doubled-down. In response to pretrial motions, the Court made a factual finding that Stewart had lied under oath before the Grand Jury. *See* Doc. No. 226, May 20, 2014 Opinion and Order at 12, 14, 15, 17 (“Stewart provided false statements in his grand jury testimony;” “Stewart’s statements were intentionally false and his misrepresentations and omissions were substantial and material;” “His false statements intentionally concealed the *quid*

pro quo that occurred when Stewart changed his vote after receiving cash from Shumake;” Stewart breached his Proffer Letter Agreement by lying and omitting material facts while under oath”). Once at trial, instead of remaining silent, Stewart chose to gamble and repeat his perjury before the jury in an attempt to avoid conviction and responsibility. *See* Doc. No. 422, Tr. Vol. 26 at 117 (denying receiving cash from Shumake in New York); Doc. No. 423, Tr. Vol. 27 at 69, 79-80 (denying receiving cash from Shumake in Florida on two occasions; denying cash from Dixon in a book). Just as Stewart ignored his oath as a sworn police officer when he accepted bribes and kickbacks, Stewart ignored his oath on the witness stand.

Stewart’s false testimony at trial centered on his denials of accepting cash from Robert Shumake. Although he was willing to admit to receiving certain things of value, Stewart refused to acknowledge receiving any cash from Shumake. The reason Stewart made this decision is because he himself recognized that he had changed his vote soon after accepting cash from Shumake in New York City. Given how bad it appeared for a trustee to accept cash right before changing his vote on an extremely controversial and contested matter, Stewart chose to lie. In the end, the jury in this case rejected Stewart’s testimony and found him guilty. Unlike many other defendants who choose to remain silent at trial, Stewart tried to

beat the system and, in the process, he committed an additional crime. His sentence should reflect this fact.

G. Avoiding Sentencing Disparities Among Similarly Situated Defendants (18 U.S.C. § 3553(a)(6))

Stewart's corrupt acts contributed to a climate of corruption that swirled around the public pension systems in Detroit. Stewart's guideline range reflects the serious and extended nature of his corruption. His sentence also should reflect these facts.

Stewart's corruption and greed while a police officer, union official and Trustee was a complete betrayal of the trust of the City's first responder pensioners and employees. Stewart sought to take advantage of his position for his own personal benefit, without a care for the damage that it could inflict on the tens of thousands of pensioners, beneficiaries, and employees. The damage caused by Stewart to Detroit's two pension funds can be measured in terms of direct financial loss from corrupt investments, lost opportunity costs of better, non-corrupt investments, and the psychic damage to elderly pensioners concerned about their financial futures in light of Stewart's corruption.

Stewart's guideline range accounts for the seriousness and significance of his criminal activity, it provides for deterrence to other public officials, and it calls

for a severe sentence to avoid unwarranted disparities with other defendants. The court therefore should sentence Stewart to at least eight years in prison.

III. CONCLUSION

Trustee Paul Stewart accepted tens of thousands in cash and other things of value from people having business before him on the board of the Police and Fire Retirement System. These men who paid bribes and kickbacks to Stewart made millions of dollars in fees and commissions because of the tens of millions of dollars in investment that Stewart voted to approve. When Stewart was caught taking bribes, he then decided to lie about it in order to avoid prosecution and then conviction at trial. Because of Stewart's conduct, the pensioners, beneficiaries, and employees lost millions from their pension fund. They lost millions from bad investments and from lost opportunities for better, non-corrupt investments. Because of his criminal conduct, the Court should sentence defendant Paul Stewart to a term of imprisonment of at least eight years.

Respectfully submitted,
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DATED: September 23, 2015

CERTIFICATE OF SERVICE

I hereby certify that on September 23, 2015, I electronically filed the foregoing document with the Clerk of the Court using the ECF system which will send notification of such filing to the following:

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